

Message Text

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ACTION ARA-17

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C O N F I D E N T I A L SANTIAGO 1159

E. O. 11652: GDS

TAGS: CI, BDIS

SUBJECT: EYZAGUIRRE VIEWS ON COPPER

1. IN LUNCH CONVERSATION LAST WEEK THE CHILEAN SUPREME COURT JUSTICE AND COPPER TRIBUNAL PRESIDENT JOSE MARIA EYZAGUIRRE MADE SEVERAL COMMENTS ON THE LEGALITIES OF THE COPPER QUESTION WHICH MAY BE OF INTEREST. HE CLAIMED THAT PRESIDENT ALLENDE GREATLY REGRETS HAVING LISTENED TO NOVOA AND WOULD LIKE TO FIND A WAY OUT OF THE BOX TO A SOLUTION. EYZAGUIRRE SAID THAT KENNECOTT AND ANACONDA ACTIONS BEFORE THE COPPER TRIBUNAL ARE PRESENTLY BEING HELD IN SUSPENSION AS THE RESULT OF DISCRETE SIGNALS FROM ALLENDE'S ENTOURAGE. APPARENTLY CENTRAL BANK VICE PRESIDENT FACIO RECENTLY PUSHED EYZAGUIRRE TO MOVE AHEAD ON THESE CASES, BUT EYZAGUIRRE SAID HE ADVISED FACIO NOT TO BE MORE PAPAL THAN THE POPE. EYZAGUIRRE SAID HE INTENDED TO AWAIT A CLEAR REQUEST FROM GOVERNMENT COUNSEL BEFORE PROCEEDING.

2. EYZAGUIRRE TOUCHED ON THE POSSIBLE USE OF THE 1914 TREATY AS AN AVENUE FOR SOME ULTIMATELY BINDING RESOLUTION OF THE COPPER PROBLEM. EYZAGUIRRE WAS NOT OPTIMISTIC. HE ADDED THAT HE SAW TWO INTRODUCTORY LEGAL QUESTIONS, EVEN BEFORE THE BASIC CONSTITUTIONAL ISSUES ARE ADDRESSED. HE NOTED HIS IMPRESSION THAT THE 1914 TREATY WAS CAST IN THE CONTEXT OF DISPUTES BETWEEN STATES-- WHILE THE COPPER CASE APPEARED ESSENTIALLY TO BE A PUBLIC-
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PRIVATE DISPUTE BETWEEN THE CHILEAN GOVERNMENT AND
PRIVATE COMPANIES.

HIS SECOND QUESTION-- SOMEWHAT RELATED

TO THE FIRST-- WAS WHETHER THE COPPER DISPUTE FELL WITHIN THE
REALM OF CHILEAN PRIVATE LAW, WHILE THE 1914 TREATY WAS
WITHIN THE REALM OF PUBLIC LAW.

3. COMMENT: EYZAGUIRRE MADE CLEAR THAT COMMENTS IN
PARA 2 ABOVE WERE OFF THE CUFF. HE WAS
ENGAGING IN CONVERSATION SPECULATION AND WOULD NOT, I BELIEVE,
WISH THESE REACTIONS TO BE REGARDED AS A DEFINITIVE VIEW.
WHILE BOTH OF EYZAGUIRRE'S QUESTIONS ARE RELATED TO THE
ESTABLISHED DISTINCTION MADE IN CIVIL LAW COUNTRIES
BETWEEN PUBLIC (I. E. GOVERNMENTAL) AND PRIVATE LAW, OTHER
EMBASSY CONTACTS IN THE CHILEAN LEGAL COMMUNITY HAVE INDICATED
THAT THESE PROBLEMS SHOULD BE SURMOUNTABLE IF A SERIOUS
INTEREST IN THE 1914 TREATY EXISTS. PRESUMABLY, THE FIRST PROBLEM
MIGHT BE HANDLED BY HAVING THE USG FORMALLY ASSERT ITS INTEREST,
AND PARTICIPATE IN 1914 TREATY PROCEDURES IN ORDER TO ALLOW
WHAT IS ESSENTIALLY A GOVERNMENT- TO- GOVERNMENT TREATY
MECHANISM TO BE USED. (IN THIS REGARD WE NOTE THAT THIS
POSSIBILITY HAS ALREADY BEEN CONSIDERED IN L/ ARA MEMO ON
ARBITRATION POSSIBILITIES OF AUGUST 16,1972.) IF THIS WERE
DONE, THE SECOND PROBLEM MIGHT ALSO BE SOLVED, SINCE IT MIGHT
THEN BE ARGUED THAT THE ISSUE HAD BECOME A GOVERNMENT- TO-
GOVERNMENT (I. E. PUBLIC LAW) DISPUTE.

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